

# EXHIBIT "A"

UNDOCS650563.1

This is an action by plaintiffs, NPS LLC ("NPS"), the owner of Gillette Stadium in Foxborough and issuer of premium seating tickets to New England Patriots football games, and New England Patriots, L.P. ("NEP"), the issuer of season tickets to New England Patriots football games, for, among other things, permanent injunctive relief to bar defendant, StubHub, Inc. ("StubHub"), from continuing to encourage, facilitate, and participate in the unlawful resale of those tickets, generally at highly inflated prices, on StubHub's Internet site, www.stubhub.com, and to establish a constructive trust over the consideration StubHub has received from such conduct. StubHub's activities constitute a substantial interference with the goodwill of NPS and NEP (together, the "Patriots") and the right of the Patriots to limit access to games at Gillette Stadium to fans who have demonstrated their loyalty through being season ticket holders or being on the wait list for Patriots season tickets.

In an effort to foster goodwill and a strong fan base for what has become one of the most popular sports franchises in New England, the Patriots make tickets to Patriots football games at Gillette Stadium available to fans across a broad economic spectrum - prices that are often far below the amount such tickets would command on an open market, given the huge demand to

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SUPERIOR COURT, CIVIL  
MICHAEL JOSEPH DONOVAN  
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CIVIL ACTION  
NO. 06-1874

Plaintiffs:  
NPS LLC and NEW ENGLAND PATRIOTS, L.P.

v.

Defendants:  
STUBHUB, INC., STEVEN MCGRATH, CAROL MCGRATH, and JOHN DOES 1-50.

SUPERIOR COURT  
DEPARTMENT OF THE  
TRIAL COURT

SUFFOLK, SS.

COMMONWEALTH OF MASSACHUSETTS

LTP0028/6609651

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Tickets to Patriots home football games -- including season tickets -- are revocable licenses. As part of the effort to maintain a safe and fan-friendly environment at Gillette Stadium, to discourage scalping, and to ensure that fans do not pay far in excess of the face value of tickets, the Patriots strictly limit the transferability of these licenses. Recognizing that even the most loyal Patriots season ticket holder may not be able to attend every home football game, the Patriots provide an outlet for season ticket holders to recover their purchase price of unused tickets through TeamExchange (also sometimes referred to as "TicketExchange"), a service provided to season ticket holders by the Patriots through Ticketmaster. TeamExchange allows

common law and the Unfair Trade Practices Act, G.L. c. 93A, § 11.

ability to control fan behavior and access to Gillette Stadium, and violates Massachusetts law which the revocable licenses that these tickets represent are issued, interferes with the Patriots' unfair to the Patriots, unfair to loyal Patriots football fans, induces violations of the terms upon residents engaged in the resale of Patriots tickets in the course of their business. This conduct is Carol McGrath, and John Does 1-50, Patriots season ticket holders who are Massachusetts football games are issued) and/or includes such violations are defendants, Steven McGrath. StubHub induces to violate state law (and the express terms upon which tickets to Patriots home football games are issued) that grossly exceed the face value of those tickets. Among those Anti-Scalping Law, G.L. c. 140, § 183A, through the unlicensed resale of tickets to Patriots environment at Gillette Stadium, and also violates or induces others to violate the Massachusetts StubHub's conduct subverts efforts to promote a safe, secure, and fan-friendly

fans who purchase these tickets must be turned away at the gate on game day. counterfeit and invalid tickets. The Patriots suffer harm to their goodwill when disappointed valid, and not counterfeit. StubHub, by contrast, has been used by those trafficking in secure environment. Only the Patriots can ensure that tickets for entry to Gillette Stadium are at games. By limiting access to Gillette Stadium, the Patriots also seek to promote a safe and relationship with fans and to encourage fan behavior that promotes a family-friendly atmosphere attend Patriots football games. In so doing, the Patriots seek to build a long-term, loyal

season ticket holders to post unused tickets on an Internet website, for potential reimbursement of their acquisition cost. Other season ticket holders, as well as those awaiting the opportunity to be season ticket holders on the Patriots season ticket wait list, can purchase tickets for those unused seats through TeamExchange at face value, with only a small administrative charge paid to TicketMaster for providing this service. This service is provided for the benefit of season ticket holders and those on the wait list and permits the Patriots to maintain control over access to Gillette Stadium.

The Patriots do not realize any direct economic benefit from the TeamExchange service. The benefit the Patriots do realize from the system they have established is the goodwill that flows from ensuring that all loyal fans have an opportunity to attend Patriots home football games at a fair price and on an equitable basis, instead of only those fans who can afford to be the highest bidders on an illegal secondary market maintained on the Internet. It is for this purpose that the Patriots seek a permanent injunction barring StubHub from operating and promoting this illegal secondary market. The Patriots also seek an injunction barring Steven and Carol McGrath from fraudulently selling invalid tickets through StubHub or other means. Finally, the Patriots respectfully asks that the Court impose a constructive trust over the ill-gotten gains of StubHub, Steven McGrath, Carol McGrath, and John Does 1-50.

#### THE PARTIES

1. Plaintiff NPS LLC ("NPS"), is a Delaware limited liability company with a principal place of business in Foxborough, Massachusetts. NPS owns Gillette Stadium, the home field of the New England Patriots football team, and is the issuer of premium seating tickets to Patriots home football games.

2. Plaintiff New England Patriots, L.P. ("NEP"), is a Delaware limited partnership with a principal place of business in Foxborough, Massachusetts. NEP is the original issuer of general admission and season tickets to Patriots home football games. NPS and NEP will be referred to herein collectively as the "Patriots."

3. Defendant, StubHub, Inc. ("StubHub"), is a Delaware corporation with a principal place of business in San Francisco, California. StubHub does business in Massachusetts, and the conduct complained of herein was done primarily and substantially in Massachusetts.

4. Defendants, Steven and Carol McGrath, are Bridgewater, Massachusetts residents. Mr. McGrath is a former Patriots season ticket holder, and Ms. McGrath is a former member of the Patriots season ticket wait list. The conduct of these defendants complained of herein was done primarily and substantially in Massachusetts.

5. Defendants, John Does 1-50, are Massachusetts residents and Patriots season ticket holders who engage in the business of unlicensed resale of those tickets in violation of Massachusetts law and the express terms of those tickets. The conduct of these defendants complained of herein was done primarily and substantially in Massachusetts. The Patriots will amend this Complaint to name these defendants upon the production of documents sufficient to identify these defendants.

#### JURISDICTION AND VENUE

6. This Court has jurisdiction over StubHub pursuant to G. L. c. 223A, § 3 and subject matter jurisdiction because the amount in controversy exceeds \$25,000.

7. This Court has jurisdiction over the McGraths pursuant to G. L. c. 223A, §§ 2-3 and subject matter jurisdiction because the amount in controversy exceeds \$25,000.

8. This Court has jurisdiction over John Does 1-50 pursuant to G. L. c. 223A, §§ 2-3 and subject matter jurisdiction because the amount in controversy exceeds \$25,000.

9. Venue is proper in this Court pursuant to G.L. c. 223, § 8 and Superior Court Administrative Directive 03-01 because the Patriots have a principal place of business in Norfolk County in Foxborough, Massachusetts.

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# FACTS

A. The Patriots' Efforts To Establish A Safe And Family-Friendly Environment At Home Football Games At Gillette Stadium, And To Promote Goodwill Among Season Ticket Holders And Those On The Season Ticket Wait List.

10. NPS owns Gillette Stadium in Foxborough, Massachusetts, the home stadium of the New England Patriots, a professional football team.

11. As the owner of Gillette Stadium, NPS has the right to control access to its facility and set the price at which access may be granted. Gillette Stadium is private property, and is not made open to the public, except for those licensees who are permitted to enter the premises for special events, such as Patriots home football games.

12. Each football season, the Patriots make available for sale revocable licenses ("tickets") that grant to the holder the privilege of entering Gillette Stadium during two pre-season and eight regular season Patriots home football games, as well as any playoff games played at the Stadium.

13. Most tickets are sold to those who buy them for all the games in a season ("season ticket holders"). Season ticket holders purchase their tickets from NPS. Premium seating tickets for the luxury suites and Club Level seats are issued pursuant to multi-year licensing agreements between purchasers and NPS that allow licensees to purchase premium tickets. Those agreements contain express provisions that bar licensees from selling their tickets or assigning their rights in the license agreement without prior approval.

14. Printed on the back of each ticket issued by the Patriots, set forth in large block letters, is the following: "ANY NON-LICENSED INDIVIDUAL RESELLING THIS TICKET BY ANY METHOD INCLUDING, WITHOUT LIMITATION, IN PERSON, ON AN AUCTION WEB SITE, OR OTHERWISE OVER THE INTERNET, IS SUBJECT TO ARREST, LEGAL ACTION AND LOSS OF SEASON TICKET PRIVILEGES." Sample copies of the front and back of a regular admission ticket and a Club Seat ticket to a Patriots football game are attached as Exhibit A.

15. The terms of these revocable licenses are explicitly set forth on the back of each pre-printed ticket. The terms of these revocable licenses -- including the prohibition on resale of tickets -- are also explicitly set forth in the Fan Guide provided to each season ticket holder with their tickets. The terms of these revocable licenses also are explicitly and publicly stated on the Patriots website at [www.patriots.com](http://www.patriots.com).

16. The Patriots reserve the right to revoke such licenses, in their sole discretion, at any time and for any reason, including violation of the terms upon which the license is granted. This right has been upheld on numerous occasions by the Courts of the Commonwealth.

17. Each ticket to a Patriots home football game at Gillette Stadium bears a unique bar code. When a ticket for entry to Gillette Stadium is presented by the holder, the bar code on the ticket is scanned electronically to ensure that the ticket is valid.

18. Through the use of these unique bar codes and electronic scanners, the Patriots are able to detect and prevent counterfeit tickets and other attempts at fraud. These measures protect ticket holders who have paid for the opportunity to attend a Patriots football game.

19. Through the use of these unique bar codes and electronic scanner, the Patriots also are able to ensure that all season ticket holders respect the rights of others to enjoy Patriots home football games. Even after they issue tickets to season ticket holders, the Patriots reserve the right to revoke tickets issued to season ticket holders at any time, and have exercised that right on occasion when ticket holders engage in unreasonable, unsafe, or otherwise unacceptable conduct that is inconsistent with Patriots policies.

20. On those occasions, the Patriots have cancelled tickets and ensured that those ticket holders do not gain access to Gillette Stadium in the future by voiding the bar codes on those tickets, rendering them useless for attendance at Patriots football games.

21. These policies are intended to create a safe and fan-friendly environment at Gillette Stadium, and contribute to the goodwill that the Patriots enjoy with their loyal fans by encouraging compliance with the Gillette Stadium behavior policy. These policies also seek to

ensure that season ticket holders comply with Massachusetts law, which bars the unlicensed resale of tickets to public events.

**B. The Patriots' Efforts To Provide Season Ticket Holders With An Outlet To Recover The Purchase Price Of Unused Tickets And Maintain Affordable Prices For All Fans.**

22. In order to foster and maintain goodwill, the Patriots make tickets to Patriots football games at Gillette Stadium available to fans across a broad economic spectrum. The face value of these tickets is often less than the price that these tickets might otherwise command at auction. Nevertheless, the Patriots have made a business decision that their long-term interests are advanced by making Patriots home football games affordable for more of their fans.

23. The Patriots recognize that season ticket holders may not be able to attend all Patriots pre-season and regular season home football games. In addition, the Patriots recognize that as a result of the popularity of the Patriots football team, some individuals who wish to purchase season tickets are unable to do so.

24. Many of those individuals who have not been able to purchase season tickets have registered with the Patriots season ticket wait list. The Patriots allow fans to join the season ticket wait list to await the opportunity to purchase licenses to up to four seats per account.

25. Currently, fans must pay a \$100 deposit per seat when they register with the Patriots season ticket wait list. That deposit is credited toward the purchase of season tickets, and is refundable if no seats are available when a fan asks to remove his or her name from the wait list. The Patriots do not impose any limit on the number of fans who can join the Patriots season ticket wait list.

26. TeamExchange is a service provided by the Patriots through TicketMaster to season ticket holders and those on the Patriots season ticket wait list. TeamExchange allows season ticket holders to post their tickets on a secure, private website. Access to this website is available only to other season ticket holders and wait list members.

27. Once a match is made between a season ticket holder who has posted on TeamExchange and a season ticket holder or wait list member seeking the identified and available seats, the Patriots cancel the unused tickets, and through TicketMaster, issue new tickets to the season ticket holder or wait list member seeking those seats.

28. These tickets are sold by the Patriots at face value, and TicketMaster adds a nominal service fee (in the amount of \$9.40 on average per ticket) to cover the cost of administering this service and providing the technology platform to facilitate this market. The holder of the unused season ticket is then reimbursed the purchase price of the unused tickets. The bar code on the unused tickets is cancelled and the newly-issued ticket for those seats receives a valid bar code.

29. TeamExchange allows season ticket holders to recover the purchase price of tickets they are unable to use without reselling their tickets in violation of Massachusetts law. Because those unused tickets are cancelled, rather than illegally transferred, the season ticket holder also is not responsible for the conduct of the people who sit in those seats. Except for the nominal service fee paid to TicketMaster, neither the selling season ticket holder, the purchasing season ticket holder (or wait list member), nor the Patriots profits directly from this TeamExchange transaction.

30. Instead, the season ticket holder or wait list member who purchased those newly issued tickets, and whose identity is thus known to the Patriots, is responsible for their own conduct and the conduct of their guests.

**C. StubHub Sabotages Efforts To Provide A Safe, Fan-Friendly, Affordable Environment By Failing To Disclose Material Information, Violating Massachusetts Law, And Encouraging Others To Violate Massachusetts Law.**

31. StubHub operates an Internet website with the domain name www.stubhub.com. According to its website, StubHub "is the fan's ticket marketplace, enabling customers to buy and sell tickets at fair market value to a vast selection of sporting, concert, theater and other live entertainment events, even those that are "sold out"."

32. StubHub solicits ticket holders to sell tickets for certain events at the StubHub website. These so-called "Sellers" post their tickets for sale on a database that is made publicly available on the Internet to so-called "Buyers" who are seeking tickets to those same events. StubHub purports to be the "facilitator" between these so-called "Sellers" and "Buyers." A copy of the StubHub User Agreement is attached as Exhibit B.

33. StubHub does considerably more than simply facilitate a transaction between so-called "Sellers" and "Buyers." In fact, StubHub guarantees that so-called "Buyers" will receive the exact tickets posted on its website, or comparable tickets, or a refund.

34. In order to fulfill this guarantee, where a so-called "Seller" fails to deliver, StubHub reserves the right to, among other things, purchase tickets and then resell them to the so-called "Buyer," requiring the so-called "Seller" to cover any cost incurred by StubHub to complete the transaction. User Agreement, § 4.3.

35. StubHub does not disclose on its Internet website to so-called "Sellers" the risk that by reselling tickets, those so-called "Sellers" may be (and with respect to tickets to Patriots football games, are) in violation of the terms upon which revocable licenses to an event venue are issued. In addition, StubHub does not disclose on its Internet website to so-called "Sellers" the fact that the unlicensed resale of tickets on the Internet constitutes a violation of Massachusetts law.

36. StubHub does not disclose on its Internet website the serious risk to so-called "Buyers" that the tickets they are purchasing are counterfeit or otherwise invalid. These so-called "Buyers" of tickets to Patriots games at Gillette Stadium do not know until they arrive at the gate and their ticket is scanned whether they have purchased a counterfeit or otherwise invalid ticket from so-called "Sellers" on the StubHub Internet website.

37. StubHub's so-called "FanProtect Guarantee," which purports to provide a remedy for victims of fraud on the StubHub Internet website, requires venue owners to "confirm" that tickets sold on StubHub's website were fraudulent before StubHub will pay a

refund to so-called "Buyers" who received counterfeit or invalid tickets. A copy of the StubHub FanProtect Guarantee is attached as Exhibit C.

38. StubHub's so-called "FanProtect Guarantee," by requiring confirmation from venue owners before giving so-called "Buyers" who purchased fraudulent tickets on the StubHub Internet website a refund, imposes transaction costs on venue owners. Venue owners are forced to allocate resources to respond to requests for confirmation from these so-called "Buyers." In addition, these so-called "Buyers" are understandably upset at having been the victims of fraud, and it is the event venue owner that is forced to deal with their frustration.

39. StubHub encourages the sale of tickets at auction, at prices that often grossly exceed the face value printed on the ticket, throughout Massachusetts. For example, in the November 13, 2006 Boston Globe, StubHub encouraged fans to "Buy and Sell" tickets in an advertisement prominently displayed at the bottom of the front page of the Sports section. A copy of the StubHub advertisement is attached as Exhibit D.

40. For tickets sold in Massachusetts, many of these sales violate G. L. c. 140, § 185A, which bars the resale of tickets without a license, as well as G. L. c. 140, § 185B, which bars the resale of tickets for more than two dollars above face value, plus certain administrative costs.

41. StubHub directly profits from the pricing of tickets above their face value in that it collects a 15% commission, which it refers to as a "seller commission," on the sale of each ticket, regardless of the sale price, and regardless of whether that sale price is in excess of any limits imposed by local, state, federal, or international laws.

42. StubHub realizes a larger commission the higher the sale price of tickets at auction on its website. Thus, StubHub directly profits from the violation of laws that bar the resale of tickets above face value.

43. In exchange for the 15% "seller commission," StubHub promises so-called "Sellers" that it will "market your tickets for you, bringing you potential buyers through our

national marketing programs and team, artist, and media partnerships," and also "provide unparalleled privacy and convenience, never revealing your identity to buyers or prospects."

44. Although it is not a licensed ticket reseller under Massachusetts law, StubHub "markets" and makes available for sale Patriots football tickets on its website, in violation of G. L. c. 140, § 185A. The overwhelming majority of these tickets are offered at prices far in excess of the face value of those tickets, in violation of G. L. c. 140, § 185D.

45. StubHub encourages John Does 1-50, a small minority of season ticket holders who engage in the business of reselling tickets without a license to do so, to post Patriots season tickets for sale on the StubHub website and auction those tickets at prices grossly in excess of face value, in violation of G. L. c. 140, § 185A and § 185D.

46. For example, as of November 7, 2006, prices for tickets posted on StubHub's website for seats in the lower level sideline sections of Gillette Stadium for the November 12, 2006 game between the New England Patriots and New York Jets ranged between \$646 and \$736 per ticket. The face value of tickets in the lower level sideline sections of Gillette Stadium are only \$125 per ticket.

47. Because these tickets are offered for sale on StubHub, rather than through the authorized outlet available at TeamExchange, other season ticket holders and wait list members are unable to access these seats through TeamExchange. As a result, the Patriots' goodwill with their loyal fan base is impaired, and the Patriots' ability to provide a safe and fan-friendly atmosphere is diminished.

48. By letter dated November 21, 2006, the Patriots placed StubHub on notice that these resale activities violate the Patriots' rights and are unlawful under Massachusetts law. The Patriots notified StubHub that these resale activities were in violation of the express terms pre-printed on the back of each and every pre-printed ticket. The Patriots demanded that StubHub immediately cease auctioning or otherwise offering for sale on its website tickets to Patriots home football games at Gillette Stadium.

**D. StubHub's Illegal Ticket Resale Activity Causes Harm To Consumers And Damages the Patriots' Goodwill With Their Loyal Fans.**

49. StubHub participates in and promotes an unlawful secondary market for Patriots tickets at prices grossly in excess of face value. This unlawful secondary market also facilitates fraudulent activity by third parties. As a result, consumers suffer harm through increased ticket prices and fraud, and the Patriots suffer harm to their goodwill with their loyal fans.

50. StubHub facilitates fraudulent activity by so-called "Sellers" who sell counterfeit or otherwise void or invalid tickets to Patriots football games on the StubHub website. So-called "Buyers" have no way of knowing whether tickets sold on StubHub are counterfeit or have already been revoked until they arrive at the gate of Gillette Stadium on game day.

51. For example, at the November 12, 2006 home football game between the New England Patriots and New York Jets, the Patriots encountered multiple instances where fans who reported that they purchased tickets to the game on the StubHub website arrived at the gates of Gillette Stadium, only to discover that their tickets were void.

52. These disappointed fans were directed to a window at the Gillette Stadium ticket office that the Patriots set up to deal with the large volume of counterfeit and void tickets being presented at the gate. For each counterfeit or void ticket, a Patriots representative made a copy of the ticket, wrote "VOID" on the barcode, and returned the ticket to the disappointed fan so that the fan could attempt to get their money back from the ticket reseller.

53. The Patriots representative explained to each disappointed fan that the ticket was void, that the Patriots are not affiliated or associated with ticket resale companies, and that the fan would not be allowed into the game. In many instances, the fan grew agitated and angry at the Patriots representative, expressing frustration that they had traveled great distances and already incurred additional costs, such as parking.

54. Among those who resold tickets through StubHub to the November 12, 2006 home game between the New England Patriots and New York Jets were Steven and Carol McGrath (the "McGraths").

55. The McGraths had previously been informed on or about October 17, 2006 by the Patriots that their accounts had been revoked because they had engaged in resale activity. The Patriots also notified the McGraths that all tickets to future games that they had acquired, whether through a season ticket account or TeamExchange, would not be honored. The Patriots offered to reimburse the McGraths for all remaining tickets upon return of those tickets to the Patriots ticket office.

56. The McGraths did not return all tickets to future games. Upon information and belief, the McGraths continue to possess tickets (now invalid) to upcoming games at Gillette Stadium, and intend to resell some or all of those tickets through StubHub or other means, despite their knowledge that these tickets will not be honored at Gillette Stadium.

57. In addition to imposing an administrative burden on the Patriots, this fraudulent activity creates public relations difficulties for the Patriots, who must deal with frustrated fans who do not appreciate the distinction between the legitimate primary market for tickets provided by the Patriots and the unlawful secondary market promoted by, among others, StubHub.

58. This secondary market also creates security risks for the Patriots and their fans. The National Football League has been informed by law enforcement agencies that its teams, as well as other sports teams, are potential targets of groups that would seek to do harm. By limiting the universe of potential ticket holders, and adopting policies which facilitate knowing the identity of those buying tickets, the Patriots are in a stronger position to provide a high level of security and hold people accountable.

#### COUNT ONE

#### Intentional Interference With Advantageous Relations (Against StubHub)

59. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

60. The Patriots enjoy an advantageous relationship with their loyal season ticket holders as well as prospective season ticket holders awaiting the opportunity to purchase season tickets on the Patriots season ticket wait list.

61. StubHub is aware of these relationships.

62. Despite this awareness, StubHub intentionally and improperly interferes with these relationships.

63. StubHub interferes with the relationship between the Patriots and their season ticket holders by encouraging and facilitating the unlawful resale of season tickets and inducing season ticket holders to violate the terms upon which the revocable licenses that these tickets represent are issued.

64. This interference directly harms the Patriots' relationship with their season ticket holders by exposing season ticket holders who violate the terms upon which the revocable licenses are granted to those season ticket holders to a greater likelihood that the Patriots will exercise their discretion to revoke those licenses.

65. This interference directly harms the Patriots' right to control access to Gillette Stadium, their ability to ensure that all season ticket holders respect the rights of others to enjoy Patriots home football games, and their ability to foster and maintain a safe and enjoyable environment at Gillette Stadium for all fans.

66. This interference also directly harms the Patriots' ability to provide season ticket holders and those on the Patriots wait list with tickets to Patriots football games at the face value prices available through TeamExchange.

67. In addition, by trafficking in fraudulent tickets, StubHub interferes with the goodwill the Patriots foster and maintain with fans generally by forcing them to turn disappointed fans away at the gate.

68. As a result of this conduct, the Patriots have suffered harm, and will continue to suffer harm, including, but not limited to, the impairment of fan goodwill and the diminished ability of the Patriots to control who has access to their stadium.

**COUNT TWO**

**Misappropriation of Name, G. L. c. 214, § 3A  
(Against StubHub)**

69. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

70. StubHub has used the Patriots name within the Commonwealth for advertising purposes and for the purposes of trade.

71. StubHub did not seek, and the Patriots did not give, written consent to use the Patriots name in connection with such advertising and trade.

72. As a result of this conduct, the Patriots have suffered harm, and will continue to suffer harm, including, but not limited to, the impairment of fan goodwill.

**COUNT THREE**

**Unfair Trade Practices Act, G. L. c. 93A, § 11  
(Against StubHub)**

73. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

74. The parties are engaged in commerce in the Commonwealth and were engaged in such commerce at the time of all events described herein.

75. The conduct of StubHub constitutes unfair or deceptive acts or practices in violation of G. L. c. 93A, § 2.

76. StubHub's actions are unfair, deceptive, willful and knowing violations of Chapter 93A.

77. As a result of this conduct, the Patriots have suffered harm, and will continue to suffer harm, including, but not limited to, the impairment of fan goodwill.

**COUNT FOUR**

**Intentional Interference With Advantageous Relations  
(Against Steven McGrath, Carol McGrath, and John Does 1-50)**

78. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

79. The Patriots enjoy an advantageous relationship with their loyal season ticket holders as well as prospective season ticket holders awaiting the opportunity to purchase season tickets on the Patriots season ticket wait list.

80. Steven McGrath, Carol McGrath, and John Does 1-50 are aware of these relationships.

81. Despite this awareness, Steven McGrath, Carol McGrath, and John Does 1-50 intentionally and improperly interfere with these relationships.

82. Steven McGrath, Carol McGrath, and John Does 1-50 interfere with the relationship between the Patriots and loyal season ticket holders by unlawfully reselling season tickets and violating the terms upon which the revocable licenses that these tickets represent are issued.

83. This interference directly harms the Patriots' right to control access to Gillette Stadium, their ability to ensure that all season ticket holders respect the rights of others to enjoy Patriots home football games, and their ability to foster and maintain a safe and enjoyable environment at Gillette Stadium for all fans.

84. This interference by Steven McGrath, Carol McGrath, and John Does 1-50 also directly harms the Patriots' ability to provide season ticket holders and those on the Patriots wait list with tickets at face value through TeamExchange.

85. As a result of this conduct, the Patriots have suffered harm, and will continue to suffer harm, including, but not limited to, the impairment of fan goodwill.

#### **COUNT FIVE**

**Unfair Trade Practices Act, G. L. c. 93A, § 11  
(Against Steven McGrath, Carol McGrath, and John Does 1-50)**

86. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

87. The parties are engaged in commerce in the Commonwealth and were engaged in such commerce at the time of all events described herein.

88. The conduct of Steven McGrath, Carol McGrath, and John Does 1-50 in the course of their business constitutes unfair or deceptive acts or practices in violation of G. L. c. 93A, § 2.

89. The actions of Steven McGrath, Carol McGrath, and John Does 1-50 are unfair, deceptive, willful and knowing violations of Chapter 93A.

90. As a result of this conduct, the Patriots have suffered harm, and will continue to suffer harm, including, but not limited to, the impairment of fan goodwill.

**COUNT SIX**

**Unjust Enrichment**

**(Against Steven McGrath, Carol McGrath, and John Does 1-50)**

91. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

92. The Patriots confer a benefit on season ticket holders by granting them non-transferable revocable licenses to attend Patriots home football games at Gillette Stadium.

93. Steven McGrath, Carol McGrath, and John Does 1-50 are aware of the terms and conditions of the grant of these revocable licenses.

94. Steven McGrath, Carol McGrath, and John Does 1-50 receive an unfair and inequitable benefit by violating the terms of their revocable licenses and selling them on StubHub for above face value.

**COUNT SEVEN**

**Establishment of Constructive Trust**

**(Against StubHub, Steven McGrath, Carol McGrath, and John Does 1-50)**

95. The Patriots repeat each of the allegations of the paragraphs of this Complaint as if fully set forth herein.

96. StubHub, Steven McGrath, Carol McGrath, and John Does 1-50 have unjustly profited from the illegal resale of tickets to Patriots football games.

97. It would be unconscionable to allow StubHub, Steven McGrath, Carol McGrath, and John Does 1-50 to retain the sums they have received beyond the face value of those tickets.

98. All funds paid to StubHub, Steven McGrath, Carol McGrath, and John Does 1-50 beyond the face value of those tickets are held in constructive trust by StubHub, Steven McGrath, Carol McGrath, and John Does 1-50 as trustees for the benefit of the Patriots.

99. The Patriots are entitled, in addition to other relief, to the return of all such funds held in constructive trust.

WHEREFORE, plaintiffs, NPS LLC and New England Patriots, L.P., respectfully request that the Court:

- (a) Enter judgment in their favor;
- (b) Award them preliminary and permanent injunctive relief against Steven and Carol McGrath;
- (c) Award them permanent injunctive relief against StubHub and John Does 1-50, barring all defendants from the illegal and unauthorized resale of Patriots tickets;
- (d) Establish a constructive trust containing three times the revenues defendants improperly received and any amount by which defendants were unjustly enriched; and
- (e) Enter such other and further relief as the Court may deem proper.

PLAINTIFFS REQUEST A JURY TRIAL ON ALL COUNTS SO TRIABLE.

Respectfully submitted,

NPS LLC and NEW ENGLAND PATRIOTS,  
L.P.,

By their attorneys,

  
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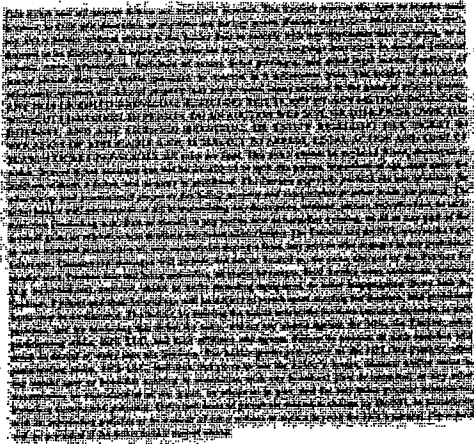
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Dated: November 21, 2006



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1.800.333.1050  
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*Patriots.com*

Sec:CL35 Row:1 Seat:12  
Closest Gate: West Clubhouse Acct#: 460378



**NEW ENGLAND PATRIOTS**

Game	Date	Opponent	Result
2001 Divisional Playoff	January 10, 2002	AT PATRIOTS vs. Raiders	13
2001 AFC Championship	January 27, 2002	AT PATRIOTS vs. Steelers	17
2002 Super Bowl XXXIV	February 3, 2002	AT PATRIOTS vs. Rams	27
2003 Divisional Playoff	January 10, 2004	AT PATRIOTS vs. Titans	14
2003 AFC Championship	January 16, 2004	AT PATRIOTS vs. Colts	16
Super Bowl XXXVIII	February 1, 2004	AT PATRIOTS vs. Steelers	24
2004 Divisional Playoff	January 16, 2005	AT PATRIOTS vs. Colts	27
2004 AFC Championship	January 23, 2005	AT PATRIOTS vs. Steelers	27
Super Bowl XXXIX	February 6, 2005	AT PATRIOTS vs. Colts	24
2005 Wild Card Playoff	January 7, 2006	PATRIOTS vs. Jaguars	3

**NEW ENGLAND PATRIOTS vs. CHICAGO BEARS**  
Sunday, November 25, 2006 at 1:00 p.m.  
**GAME 6** *Giants Stadium*  
\*GAME SUBJECT TO POSSIBLE TIME SCHEDULE CHANGES\*

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2001 Divisional Play  
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2003 Divisional Play  
2003 AFC Championship  
Super Bowl XXX  
2004 Divisional Play  
2004 AFC Championship  
Super Bowl XXX  
2005 Wild Card Play

**NEW ENGLAND**  
**Saturday**

Sec:335




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## StubHub, Inc. User Agreement

### 1. How this agreement works:

**1.1 Introduction.** Welcome to StubHub's online buying and selling community (the "Site"). This User Agreement ("Agreement") lists the terms of the agreement between you ("You") and StubHub, Inc. ("StubHub" or "We" or "Us") for the buying and selling of tickets ("Tickets"), and all other services that We provide (the "Services"). By completing the registration process, You agree to accept the terms and conditions of this Agreement and to become a member of this Site.

**1.2 Modification.** If We change this Agreement, We shall post a revised version of this Agreement, which shall automatically replace the terms of this Agreement. The revised version of this Agreement is automatically effective 3 days after it is initially posted on the Site. Your continued use of the Site and the Services following StubHub's posting of a revised Agreement will constitute Your acceptance of the revised Agreement. If You do not agree with the terms of this Agreement or any revised version of this Agreement, do not continue to use the Services on this Site.

**1.3 Additional Policies.** This Agreement incorporates by reference the following policies and documents also found on this Site:

- [Privacy Policy](#)
- [Buyer Learning Center](#)
- [Seller Learning Center](#)

### 2. Who We are and what We do.

**2.1 Ticketing Service Provider.** StubHub is a web site service that allows members who want to buy tickets ("Buyers") to find members who want to sell the same tickets ("Sellers"). It is important to remember that We simply act as a facilitator to allow the purchase and sale of tickets. We are not involved in the actual transactions between Buyers and Sellers. We cannot ensure that a Buyer or Seller will actually complete a transaction.

### 3. How to become a member:

**3.1 Requirements.** To be a member of this Site, You must agree to accept the terms and conditions of this Agreement, and You must have a valid credit card that We accept. You may only use the Services if You can legally enter into and form binding contracts. If You do not qualify, please do not use or try to use the Services.

**3.2 Registration.** We will not accept any request from You to buy or sell tickets before You have registered with Us. To register, You must provide your real name, address, phone number, and email address.

**3.3 Member Name and Password.** You will need a member name and password to access the Site and use the Services. You are solely responsible for maintaining the security of your member name and password and for all activity that occurs under your member name and password. You should not disclose your member name or password to any other person, because You are responsible for any action taken under your member name or password.

### 4. How to list an item as a Seller:

**4.1 Listing Process.** A member who wants to sell tickets lists the tickets in the StubHub database. As part of the listing process, the Seller assigns a price to the tickets and provides information such as the event, date, section, seat, and row in accordance with the process outlined in the Seller's Handbook.

**4.2 Auction, Fixed Price and Declining Price Formats.** If a Seller posts a ticket for sale on StubHub, the option is provided to sell that ticket in one of three formats: (i) auction, (ii) fixed price or (iii) declining price.

- **Auction:** the Seller sets the minimum price and auction length (up to seven days maximum). Members of the Site can then bid on the Seller's ticket.
- **Fixed Price:** the Seller sets a definite price at which the ticket will sell immediately if a member clicks Buy Now.
- **Declining Price:** based on the principle of market value, this option allows a Seller to select both a maximum and minimum price for the ticket. The ticket will first appear at this maximum price and, unless purchased, the price will decrease linearly every day until the minimum price is reached.

**4.3 Guaranteed Ticket Fulfillment.** Once You list tickets for sale and a Buyer purchases or bids on your tickets, You are responsible for completing the transaction with the exact tickets that you listed. You will be charged a replacement fee if You list tickets for sale and those exact tickets are not available. The replacement fee will depend on how much it costs Us to purchase a comparable or better replacement tickets for the Buyer.

#### 5. Finding a ticket that You want and making an offer as a Buyer.

**5.1 Making an Offer.** A member who wants to buy a ticket first scans the StubHub database for tickets listed by Sellers that match the buyer's desired tickets. Once the Buyer finds a matching ticket, the Buyer notifies StubHub with an "offer" that the Buyer is willing to purchase the ticket.

**5.2 Credit Card Authorization.** When We receive an offer, We obtain an authorization from the Buyer's credit card equal to the price, buyer fees and shipping costs of the tickets. The authorization will remain on the Buyer's credit card until the sale is completed or the order is cancelled.

**5.3 Ticket Information.** Event dates, times, venues and subject matter, which are listed on the ticket, may change. It is up to You, the Buyer, to verify the most recent changes. Please contact the box office or refer to local listings for any changes.

**5.4 Substituted Seat Locations.** Ticket Listings are a representation of actual seat location. Tickets may be substituted with comparable or better seat locations. Actual seat and row numbers may vary from those purchased on the Site.

#### 6. Notifying the Seller of the offer.

**6.1 Notification.** Once We obtain an authorization from the Buyer, We notify the Seller of the sale via email and/or telephone, and We confirm to the Seller that the Buyer is willing to pay the price, the shipping costs, and any taxes that We have calculated for the item.

**6.2 Seller's Confirmation.** In most cases, the Seller confirms the order within 2 business days using our automated online confirmation process. The Seller is expected to notify the buyer of expected ship date when confirming the order, as stated in the Seller's Handbook.

#### 7. Completing the sale.

**7.1 Credit Card Charge.** Once the Seller confirms the order, We charge the Buyer's credit card for the sale price of the item, plus buyer fees plus the shipping costs and any taxes. At no time do We provide the Buyer's credit card information to the Seller. The credit card charge is paid to us, and the Seller is compensated for the sale according to the payment policy in the Seller's Handbook. Sellers will be able to see the exact fee that will apply before completing the sale process and committing to sell their tickets.

**7.2 Dispute Resolution.** After receiving the tickets, if a Buyer is dissatisfied with any part of the purchase the Buyer must follow the rules for dispute resolution set forth in our Buyer Guarantee.

#### 8. Your relationship with us.

**8.1 Permission.** You grant StubHub permission to charge your credit card for the purchase of items (as a Buyer).

**8.2 Grant of License.** For the purpose of promoting and facilitating the sale and purchase of tickets and items that You list for sale, You grant to StubHub a non-exclusive, transferable, worldwide, paid-up, royalty-free right and license to reproduce, modify, adapt, publish and display on the Site and on the sites of our marketing partners your descriptions of tickets listed for sale.

**8.3 Release.** We are not involved in the actual transactions between Buyers and Sellers. If You have a dispute with one or more members, You release StubHub and all affiliated companies, officers, directors, agents, parents, subsidiaries, legal representatives and employees from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such dispute. You acknowledge that California Civil Code Section 1542 provides: "A general release does not extend to claims which the creditor does not know or suspect in fact to be in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If you are a resident of California, you agree to waive California Civil Code Section 1542. If you are a resident of any other state or foreign country, you agree to waive in advance any similar laws of such other jurisdiction.

#### 9. Things We don't allow.

**9.1 Adult Materials.** You agree not to list, sell or buy any adult materials, obscene materials or pornographic materials through the Site, directly or indirectly, and You agree not to use any names or other information found on or via this Site to do so.

**9.2 Illegal Activity.** You agree not to use this Site for unlawful purposes or in an unlawful manner. You agree to comply with all applicable local, state, federal and international laws, statutes and regulations regarding use of the Site and selling value of the tickets. You agree not to use or permit anyone to use information provided through the Site for any unlawful or unauthorized purpose. You agree not to register under a false name or use an invalid or unauthorized credit card.

**9.3 Double Posting and Removal of Tickets.** To post a ticket for sale on StubHub You must first register with the Site. Once a ticket is posted, We strongly discourage posting that ticket for sale elsewhere. If You choose to sell your ticket

in an auction format. We require You to only list your ticket for sale on StubHub. If You choose to sell your ticket in a fixed price format, You may post your ticket for sale in other marketplaces but are required to remove your ticket from the Site immediately if your ticket sells elsewhere. Except as provided herein, You agree not to promote the sale of tickets through any site other than StubHub. We reserve the right to prohibit users from posting tickets on StubHub if they are not able to provide the exact tickets that were posted on StubHub.

**9.4 Stolen Property.** The sale of stolen property on StubHub is strictly forbidden, and violates state, federal and international law. StubHub strongly supports law enforcement efforts to recover stolen property that is listed on the Site, and urges the prosecution of those responsible for knowingly attempting to sell such items on StubHub. Stolen property includes items taken from private individuals, as well as property taken without authorization from companies or governments.

**9.5 Sellers Shall Not Include Promotional Material with Tickets.** The Buyer name and address information is provided to Sellers for the sole purpose of shipping the specific purchased product(s) and may not be used by the Seller for any other purpose, either in connection with such shipment(s) or separately from such shipment(s). You agree not to include in your shipment to the Buyer any promotional or other commercial material that is not provided or approved by StubHub. This includes, without limitation, material that announces a website or invites the Buyer to visit a website, other than StubHub, catalogs, business cards, business reply cards, bookmarks, coupons, flyers, solicitations or other marketing or advertising material. You agree not to separately contact the Buyer at any time for any reason.

#### 10. What happens if We think You have broken our rules.

**10.1 Investigations.** We may investigate complaints and violations of our policies. You agree to cooperate fully with such investigations, including without limitation providing us specific information regarding your right to a ticket, the source of a ticket, your acquisition of a ticket, and the price you paid for a ticket.

**10.2 Damages, Penalties and Expenses.** We may take any action that We deem appropriate in our sole discretion, including without limitation issuing a warning, suspension or termination of service, denying access following a listing or recommending You call a listing off the Site, breach the agreement or any document incorporated by reference. (b) You are agreeing to cooperate with our investigation of a complaint or reported violation. (c) We are entitled to verify or authenticate any information You provide to us. We reserve the right to suspend your account or suspend your access to the Site, or to StubHub, if You are found to have violated the agreement or any document incorporated by reference. (d) StubHub is not obligated to pay You for any sales or We have a good faith belief in those sales were made in violation of this agreement.

**10.3 Disclosure of Information.** You agree that StubHub may report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other relevant third parties. StubHub will cooperate to ensure that violators are prosecuted to the fullest extent of the law.

**10.4 Making Adjustments.** You authorize us to withhold payment or charge your credit card account any amount You owe us if (a) a sale is cancelled for any reason; (b) an adjustment is made under our Buyer Protection Guarantee; (c) We reasonably believe that You have committed fraud or other illegal act or omission during any buying or selling activity; (d) You are not able to produce the exact seats that you listed on the Site; or (e) You otherwise owe us a specific amount. If any of these things happen, We may also deduct from any amount We owe You the amount You owe Us.

#### 11. Your warranties to us.

**11.1 Accurate Descriptions.** For all tickets You list as the Seller, You warrant that Your descriptions of the tickets accurately detail and describe the tickets offered for sale.

**11.2 Other Information.** You represent and warrant that any information You provide to us, to other members, or to visitors (a) is not false, inaccurate, misleading, obscene or defamatory; (b) is not fraudulent; (c) does not involve the sale of counterfeit or stolen items; (d) does not infringe any third party's copyright, patent, trademark, trade secret, right of publicity or privacy, or other right; (e) does not violate any law, statute, ordinance or regulation, including without limitation those governing consumer protection, unfair competition, anti-discrimination or false advertising; and (f) does not contain any viruses or any programming that is intended to damage, interfere with, intercept or appropriate any system, data or personal information.

**11.3 Laws and Regulations.** You warrant that You will comply with all applicable local, state, federal and international laws, statutes and regulations regarding use of the Site and selling value of the tickets.

**11.4 Indemnity.** You agree to indemnify and hold StubHub and (if applicable) any parent, subsidiaries, affiliates, officers, directors, attorneys, agents and employees, harmless against all liabilities, costs and expenses (including reasonable attorneys' fees) incurred by StubHub and (if applicable) any parents, subsidiaries, affiliates, officers, directors, agents, attorneys and employees that arise out of any claim asserted by a third party that involves, relates to or concerns any of your actions or omissions on the Site.

#### 12. What We don't warrant (disclaimers of warranties and limitations of liability).

**12.1 No Warranty.** EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS AGREEMENT, STUBHUB PROVIDES THE SOFTWARE, SITE AND SERVICES ON AN "AS IS" BASIS AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. STUBHUB MAKES NO WARRANTY WITH RESPECT TO ITS SOFTWARE, ANY TICKETS, ANY EVENT, THE SERVICES STUBHUB PROVIDES, OR THAT SELLERS OR BUYERS WILL PERFORM AS PROMISED. AND STUBHUB EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY.

**TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FITNESS FOR A PARTICULAR PURPOSE.** THIS WARRANTY DISCLAIMER AFFECTS YOUR LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW EXCLUSIONS OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

**12.2 Waiver of Consequential Damages, Liability Limit.** STUBHUB EXPRESSLY DISCLAIMS ANY RESPONSIBILITY FOR ANY LOST PROFITS OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION INDIRECT AND SPECIAL DAMAGES) THAT MAY RESULT FROM THE SERVICES, THE SITE, OR THE SUSPENSION, TERMINATION OR MALFUNCTION OF THE SERVICES OR THE SITE. STUBHUB'S LIABILITY TO YOU OR ANYONE ELSE IN ANY CIRCUMSTANCE IS LIMITED TO THE LESSER OF (A) \$100, AND (B) THE TOTAL DOLLAR AMOUNT OF ALL TICKETS AND OTHER ITEMS YOU BOUGHT AND/OR SOLD VIA STUBHUB IN THE 12 MONTHS PRIOR TO THE ACTION ALLEGEDLY GIVING RISE TO LIABILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU.

**12.3 Allocation of Risk.** YOU ACKNOWLEDGE AND AGREE THAT THE FOREGOING DISCLAIMERS AND LIMITATIONS OF LIABILITY REPRESENT BARGAINED FOR ALLOCATIONS OF RISK, AND THAT THE PRICING AND OTHER TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT SUCH ALLOCATIONS OF RISK.

**12.4 Tax Indemnity.** You agree that StubHub is not responsible in any way for the accuracy or suitability of any payment of taxes to any entity on your behalf. You shall indemnify and hold StubHub and (if applicable) any parents, subsidiaries, affiliates, officers, directors, agents and employees harmless against all liabilities, costs, interest and expenses (including reasonable attorneys' fees) incurred by StubHub that arise out of any third party or governmental claim that involves, relates to or concerns (i) any federal, state or county tax obligation or amounts due or owing under any tax regulation, law, order or decree or (ii) any dispute concerning the tax status of StubHub.

**12.5 Change or Suspension of Site.** StubHub reserves the right at any time to modify or discontinue, temporarily or permanently, the Site or any part of the Site with or without notice. You agree that We shall not be liable to You or any third party for any modification, suspension or discontinuance of the Site or any Services under this agreement, for any reason. We do not guarantee continuous, uninterrupted or secure access to our service, and operation of our Site may be interfered with by numerous factors outside of our control.

**12.6 Regular Maintenance.** The Site could be unavailable from 12am-3am Pacific time each morning while it is being updated and modified. During this time, the Site will be temporarily unavailable.

### 13. We own the intellectual property rights to our Site and Service.

**13.1 Ownership of Intellectual Property.** You acknowledge and agree that (i) our patents, trademarks, trade names, service marks, copyrights and other intellectual property (collectively, "Intellectual Property") is and shall remain our sole property, and (ii) nothing in this agreement shall confer in You any right of ownership or license rights in our Intellectual Property. In addition, You shall not now or in the future contest the validity of StubHub's Intellectual Property.

**13.2 Copyright.** Copyright (c) 2000-2003, StubHub, Inc. The software and the Site, including without limitation all text, graphics, logos, buttons, icons, images, audio clips, and computer programs, are the property of StubHub or its suppliers, and are protected by U.S. and international copyright, trademark and other laws. The compilation (meaning the collection, arrangement and assembly) of all content on the Site is the exclusive property of StubHub and protected by U.S. and international copyright law. Any unauthorized reproduction, modification, distribution, transmission, republication, display, or performance of the software or the content on the Site is strictly prohibited.

### 14. Additional terms that affect our agreement.

**14.1 No Agency.** You and StubHub are independent contractors, and no agency, partnership, joint venture, employer-employee or franchisor-franchisee relationship is intended or created by this Agreement.

**14.2 Notices.** Except as expressly stated otherwise, all notices to StubHub shall be sent to the email addresses provided on the Site (e.g., customerservice@StubHub.com). Our street address is 552nd Street, Suite 300, San Francisco, CA 94105. Except as expressly stated otherwise, all notices to You shall be sent to the email address You provided to us during the registration process. Such notice shall be deemed given one business day after the email is sent.

**14.3 Governing Law; Arbitration.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A., without regard to its provisions governing conflicts of law. Except for allegations that You have infringed or have threatened to infringe our intellectual property rights, You and We agree that any dispute or controversy between us, or arising out of or concerning performance or breach of this Agreement, shall be settled by one arbitrator in binding arbitration, to be held in San Francisco, California, U.S.A., under the then-current rules of the American Arbitration Association. Judgment on the arbitration award may be entered in any court of competent jurisdiction. If We allege that You have infringed or threatened to infringe our intellectual property rights, then, in addition to any other rights and remedies We may have, We may seek any preliminary or permanent injunctive relief from any court of competent jurisdiction. For such actions, You consent to the exclusive personal jurisdiction and venue of the federal and state courts in and for San Francisco, San Francisco County, U.S.A.

**14.4 Miscellaneous.** This Agreement (and all documents incorporated by reference) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof, whether written or oral. No amendment.

modification or supplement of any provision of this Agreement will be valid or effective unless made in accordance with the express terms of this Agreement. If any provision of this Agreement is held to be invalid or unenforceable under any circumstances, its application in any other circumstances and the remaining provisions of this Agreement shall not be affected. You may not assign or transfer this Agreement, or any of its rights or obligations, without the prior written consent of StubHub, which We can refuse in our sole discretion. Nothing in this Agreement is intended to confer benefits, rights or remedies onto any person or entity other than the parties hereto and their successors and permitted assigns. Our suppliers and co-brand partners are third party beneficiaries of this Agreement. The subject heading at the beginning of each paragraph of this Agreement is for reference purposes only and in no way defines, limits, construes or describes the scope or extent of such paragraph.

Sports Tickets

Concert Tickets

Theater Tickets

Exclusive Tickets

Have questions about how to buy tickets or sell tickets? Email or call us toll free at 866.StubHub (866.788.2482).  
Customer service will help you buy tickets or sell tickets from 5:00 AM - 8:00 PM Pacific Time weekdays or 7:00 AM - 8:00 PM Pacific Time weekends.

StubHub! Where Fans Buy & Sell Tickets

Page 6 of 6

You are buying tickets from a third party; neither StubHub.com nor StubHub, Inc. is the ticket seller. Ticket prices are set by the seller and may differ from face value. ALL SALES AND BIDS ARE FINAL. No refunds, cancellations or exchanges will be issued for date or time changes or partial performances. All prices listed are in US dollars.



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1.866.STUBHUB

**StubHub FanProtect™ Guarantee**

Fans, whether you are buying tickets or selling tickets in our marketplace, StubHub protects you against fraud and makes sure that you are 100% guaranteed.

**FanProtect™ for Buyers****We guarantee:**

- You will get your tickets in time for the event.
- Your tickets will be authentic and valid for entry.
- You will receive tickets comparable to or better than the tickets you ordered, or your money back.
- You will be refunded if the event is cancelled and is not rescheduled.

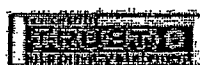
[See the full guarantee >](#)**FanProtect™ for Sellers****We guarantee:**

- You will never be contacted directly by a buyer or prospective buyer.
- You can adjust your ticket prices to reflect marketplace value at any time.
- You will receive payment from StubHub for all ticket orders that you confirm and fulfill.

[See the full guarantee >](#)[Sports Tickets](#)[Concert Tickets](#)[Theater Tickets](#)[Exclusive Tickets](#)

Have questions about how to buy tickets or sell tickets? Email or call us toll free at 866.StubHub (866.788.2482). Customer service will help you buy tickets or sell tickets from 9:00 AM - 8:00 PM Pacific Time weekdays or 7:00 AM - 6:00 PM Pacific Time weekends.

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## StubHub FanProtect™ Guarantee

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[FanProtect™ for Buyers](#)
[FanProtect™ for Sellers](#)

### FanProtect™ for Buyers

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- You will get your tickets in time for the event.
- Your tickets will be authentic and valid for entry.
- Your tickets will be as good as or better than the ones you ordered.
- You will be refunded if the event is cancelled and not rescheduled.

Benefits provided to Buyers under the FanProtect™ Guarantee

Buyers will receive the following benefits under the FanProtect™ Guarantee if the requirements below are met:

- **If tickets are not received before the event:**  
If the event has not yet occurred, StubHub will attempt to locate the tickets and ensure their delivery (or attempted delivery) to you prior to the event. If the tickets cannot be located or the time for the event has passed without any delivery attempt, StubHub will issue the Buyer a refund for the full cost of the tickets, including service fees and shipping and handling charges.
- **If tickets are not the same or better than those the Buyer committed to purchase:**  
We will investigate your complaint and determine whether you received the same or better tickets than those you committed to purchase. If we determine that you did not receive the same or better tickets, we will: (i) provide you with replacement tickets that are the same as or better than the tickets you committed to purchase, or (ii) at our option and following our receipt of the tickets from you, refund to you the full cost of the tickets, including service fees and shipping and handling charges. StubHub may, in its sole discretion, deem tickets received as the same or better than those the Buyer committed to purchase.
- **If tickets are fraudulent and are not honored by the venue:**  
StubHub will provide Buyer with a prepaid FedEx shipping label to use in returning the tickets to us, along with a Ticket Return Form. If the venue confirms that the tickets were fraudulent, we will issue the Buyer a refund for the full cost of the tickets, including service fees and shipping and handling charges. In the event of any problems at the venue, please call our StubHub Customer Service immediately at (866) 788-2482 for assistance.
- **If the event is cancelled or postponed:**  
If an event is cancelled and will not occur at a later date, StubHub will send the Buyer an email offering the Buyer the opportunity to return their tickets within 2 weeks in order to receive a refund for the full cost of their tickets, including service fees and shipping and handling charges. StubHub, in its sole discretion, will determine when an event has been cancelled. If an event is postponed and the venue where the event is to be held will issue new replacement tickets, StubHub will work to obtain replacement tickets for the Buyer. If an event is postponed and the number of replacement tickets available is limited, StubHub may, in its sole discretion, deem the event cancelled.

Making a claim under the FanProtect™ Guarantee

If a problem should arise, the Buyer must follow these steps in order to receive a benefit under the FanProtect™ Guarantee:

- **If tickets are not received before the event:**  
Buyer must contact StubHub Customer Service at [customerservice@stubhub.com](mailto:customerservice@stubhub.com) or 866.StubHub (866.788.2482) no later than the earlier of (i) seven calendar days after the date the tickets were to arrive and (ii) two days prior to the event. If Buyer does not contact StubHub Customer Service within this required time period, the benefits of this guarantee will not be applicable.
- **If tickets are not the same or better than those the Buyer committed to purchase:**  
Buyer must contact StubHub Customer Service at [customerservice@stubhub.com](mailto:customerservice@stubhub.com) or 866.StubHub (866.788.2482) no more than two days after Buyer's receipt of the tickets. Please note that similar or

more desirable tickets may be substituted in place of the specific tickets listed on the StubHub site. StubHub may, in its sole discretion, deem tickets received as the same or better than those the Buyer committed to purchase.

- If tickets are fraudulent and are not honored by the venue:  
Buyer must contact StubHub within 24 hours following the start time for the event. Buyer refunds for fraudulent tickets are limited to a lifetime maximum of \$1000, or two claims under the FanProtect™ Guarantee, whichever comes first.
- If the event is cancelled or postponed:  
If an event is cancelled and will not occur at a later date, StubHub will send the Buyer an email offering the Buyer the opportunity to return their tickets within 2 weeks in order to receive a refund for the full cost of their tickets, including service fees and shipping and handling charges. If an event is postponed and StubHub is unable to obtain replacement tickets for the Buyer, StubHub will issue a refund after the Buyer returns their unused tickets to StubHub. All returned tickets must be received by StubHub within ten (10) days of the Buyer's receipt of notice from StubHub regarding eligibility for refund.

#### Abuse of the FanProtect™ Guarantee

We reserve the right to suspend or permanently cancel the registration of any Buyer or Seller who attempts to abuse the FanProtect™ Guarantee and will report any such abuse to the appropriate legal authorities.

#### FanProtect™ for Sellers

How the FanProtect™ Guarantee protects Sellers  
StubHub guarantees all Sellers the following:

- You will never be contacted directly by a buyer or prospective buyer.
- You can adjust your ticket prices to reflect market place value at any time.
- You will receive payment from StubHub for all ticket orders you confirm and fulfill.

#### Benefits provided Sellers under the FanProtect™ Guarantee

Sellers will receive the following benefits under the FanProtect™ Guarantee if the requirements below are met:

- If you are contacted directly by a Buyer or prospective buyer regarding an order:  
If you are contacted directly by a StubHub Buyer or prospective buyer regarding an order, StubHub wants to know. Please refer the customer to StubHub Customer Service at customerservice@stubhub.com or 866.StubHub (866.788.2482) for assistance. Please note the time and incident of the contact, as well as any additional details. Then notify Customer Service or your Large Seller Account Representative about the incident to be refunded the commissions associated with the order in question.
- If you cannot adjust your ticket prices on the site:  
If you cannot adjust pricing for a ticket listing, please call Customer Service at 866.StubHub (866.788.2482) for assistance. You must be using a supported browser and have internet connectivity. StubHub reserves the right to make changes to its web site functionality that may require ticket pricing to be temporarily unavailable. StubHub is not responsible for general internet availability and ISP outages which may impact your ability to access the site. All ticket prices are subject to any local, state, federal and international laws for which the Seller is solely responsible to complying with. See our Terms of Use.
- If you have not received payment for a ticket order:  
If a payment for a ticket order has not yet been received, please first check to make sure that the Seller Payment Information you provided to StubHub is correct in My Account. If the Seller Payment Information is correct but you still have not received payment, you may submit a Payment Investigation Request. StubHub will investigate the payment in question to determine whether the payment has already been processed and if it has not, we will make every effort to do so as quickly as possible.

#### Making a claim under the FanProtect™ Guarantee

In order to receive a benefit under the FanProtect™ Guarantee, Sellers must do the following:

- If you are contacted directly by a Buyer or prospective buyer regarding an order:  
If you are contacted directly by a StubHub Buyer or prospective buyer regarding an order, you may request that the commission for the order in question be refunded by StubHub by submitting a Buyer Contact Investigation Request. Please provide as much detail as possible.
- If you cannot adjust your ticket prices on the site:  
If you cannot adjust the price on a fixed or declining price ticket listing, or on an auction listing where a bid has not yet been placed, please call Customer Service at 866.StubHub (866.788.2482) for assistance. You must be using a supported web browser and have reliable internet connectivity. StubHub is not responsible for general internet availability and ISP outages which may impact your ability to access the site. See Terms of Use. StubHub reserves the right to make changes to its web site functionality that may require ticket pricing to be temporarily unavailable during scheduled hours. StubHub may, in its sole discretion, deem ticket pricing unavailable. Click here to submit a Pricing Availability Investigation Request.
- If you have not received payment for a ticket order:

If you have not received payment for a ticket order, please first make sure that the Seller Payment Information you provided to StubHub is correct. Do this by logging in and going to My Account. If you opted to receive payment via PayPal, the same email address you provided in your Seller Payment Contact must also be registered at PayPal. If you opted to receive a check payment issued to you by name, please make sure that the First and Last Name you provided in the Seller Payment Contact is correct. If you opted to receive a check payment issued to your company, please make sure that the Company Name you provided in the Seller Payment Contact is correct. After making any necessary corrections, please allow 2-3 weeks for StubHub to re-issue payment. If your Seller Payment Information is already correct, please submit a Payment Investigation Request. StubHub will investigate your complaint promptly and determine the status of your payment. If your payment has not already been properly processed by StubHub, we will make every effort to do so as quickly as possible.

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#### Terms and Conditions

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Sports Tickets | Concert Tickets | Theater Tickets | Exclusive Tickets

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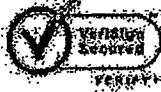
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Concert Tickets

Theater Tickets

Exclusive Tickets

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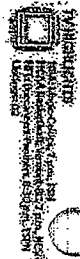
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# Sports

Standard  
page  
size

THE BOSTON GLOBE MONDAY, NOVEMBER 19, 2006

## Lost in the fog

**Bob Ryan**  
Team judged  
to be lacking

**Tom Holman**  
Tom Holman  
Image was  
hard to shake



A Patriots streak  
comes to an end  
as misty Celtic

of last year

**By Tom Holman**  
The Patriots' streak of 16 wins ended Monday night as the team lost to the Bears, 27-10, in a game that was as much a test of character as a test of skill.

The Patriots, who had won 16 straight games, including 13 in a row, were out of sync from the start. They were 10-0 in the first half, but fell behind 10-0 in the second half.

The Patriots' defense, which had been the league's best, was out of sync from the start. They were 10-0 in the first half, but fell behind 10-0 in the second half.

The Patriots' offense, which had been the league's best, was out of sync from the start. They were 10-0 in the first half, but fell behind 10-0 in the second half.

## Revolution are lacking themselves again



The Patriots' defense, which had been the league's best, was out of sync from the start. They were 10-0 in the first half, but fell behind 10-0 in the second half.

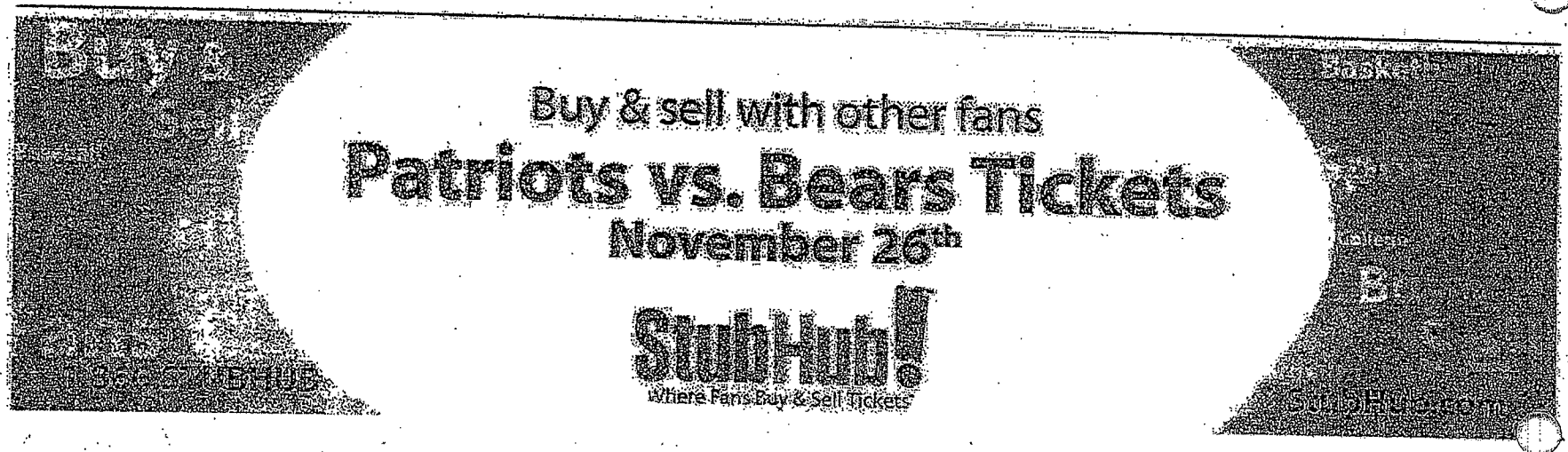
Inside

There's a lot of talk about the Patriots' defense, but the team's offense is the real story. The Patriots' offense, which had been the league's best, was out of sync from the start. They were 10-0 in the first half, but fell behind 10-0 in the second half.

Buy & sell with other fans  
**Patriots vs. Bears Tickets**  
November 26th

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www.stubhub.com

StubHub.com



Buy & sell with other fans

**Patriots vs. Bears Tickets**

November 26<sup>th</sup>

**StubHub!**

Where Fans Buy & Sell Tickets

StubHub.com

The advertisement is a horizontal banner with a dark, textured background. It features a large white circle in the center. The text is arranged around and inside this circle. The words 'Buy & sell with other fans' are at the top. Below that, 'Patriots vs. Bears Tickets' is written in a large, bold, sans-serif font. Underneath that, 'November 26<sup>th</sup>' is written in a smaller font. The 'StubHub!' logo is prominently displayed in the center, with the tagline 'Where Fans Buy & Sell Tickets' below it. The website 'StubHub.com' is visible in the bottom right corner. The background has a grainy, stippled texture.